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ABSTRACT

This publication reviews court decisions and examines legal principles relevant to the dismissal of students for failure to meet academic standards. Much of the discussion involves the dismissal of students from medical schools and other professional schools, since that has been the source for much of the relevant court litigation. The discussion begins with a brief historical review of court decisions involving academic dismissal and then examines more recent decisions, with particular emphasis on academic penalties or dismissal for unexcused absences and on procedural due process requirements in academic dismissal cases. The final section attempts to summarize the legal principles governing academic dismissal of students in order to provide general guidelines for school officials. (JG)

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A Legal Memorandum

NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
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GRADE REDUCTION, ACADEMIC DISMISSAL AND THE COURTS

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This fall the U.S. Supreme Court will hear the case of a medical student who was dropped from medical school for reasons which the school claims were academic rather than disciplinary. The student claims that the dismissal without notice of charges and a formal hearing constitutes a violation of her constitutional rights to due process. She further contends that the dismissal was itself a violation of her rights because it was not based on appropriate academic criteria, but rather upon her sex, religion, and physical appearance. She also said that the decision of the medical school was arbitrary, capricious, and unreasonable in that the school did not follow its own rules in handling her request for a hearing. *Horowitz v. University of Missouri*, 538 F2d 1317 (1976).

The federal district court ruled in favor of the school, but on appeal, the U.S. Court of Appeals for the Eighth Circuit reversed that judgment, holding that the 14th Amendment to the U.S. Constitution requires notice of charges and a hearing before a medical student can be dismissed for deficient academic performance. It did not agree that the basis of the dismissal action was improper.

If the judgment of the Eighth Circuit is affirmed by the Supreme Court, a new era of court involvement in the operation of public schools may be opened. No matter how the case is decided, however, it is noteworthy because it will be the first time that the nation's highest court will have addressed the issue of the constitutional rights of students in regard to school penalties for academic as opposed to disciplinary reasons.

"Educational" Decisions Generally--The Historic Context

Until the last few years, the law in this area was clear though court decisions were few. Early in this century, for example, a high school student alleged that he was wrongly dismissed on the basis of a board regulation that stipulated any student falling below the 60th percentile in two or more subjects was to be demoted one grade. If the deficiency occurred in the freshman year, the pupil would be dropped from the school. Despite the apparent contradiction of such a rule with the acknowledged right of children to attend the public schools, the Massachusetts Court held the rule to be reasonable, saying:

> So long as the board acts in good faith, their conduct in formulating and applying standards in making decisions touching this matter is not subject to review.... It is an educational question, the final determination of which is vested by law in the officers charged with the performance of that duty.

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The general principle involved was that educational decisions must be left to educators, and it was almost universally applied.

With this attitude confronting them, it is no wonder that few students or their parents tried to take school officials to court on academic penalties. When they did, they succeeded only when they could clearly show bad faith on the part of the officials, or by developing some special legal theory, which convinced the court to override its usual unwillingness to review the school's judgment.

In regard to graduation, for example, a doctrine developed that the award of a diploma is a "ministerial" or automatic act as opposed to one requiring the exercise of discretion. It must, therefore, be carried out if the student has met the academic requirements. Upon analysis, however, it becomes apparent that cases on this point usually concerned the attempt to deny the diploma for disciplinary rather than academic reasons, and were therefore not exceptions to the rule on the school's authority on academic matters. *Valentine v. Independent School District*, 183 NW Iowa (1921).

Classification and assignment of pupils to particular curricula or "tracks" have been an issue more clearly in the realm of the professional educator's decision making, which has been the source of some litigation. But here, too, the usual deference to school officials has been displayed by the courts unless a clear case could be made that a rule was totally arbitrary or applied in an arbitrary or capricious manner. A grade reduction rule which applied only to male students or those with dirty fingernails would likely be regarded as arbitrary. If on the other hand, it were drawn up to apply to all, but was in fact only applied to one group, it would be an arbitrary or discriminatory application of the rule. If a rule is supposed to apply to all, but is applied by the administrator only to some individuals in indistinguishable cases, it would be a capricious application of the rule.

Few parents were successful in protesting educational decisions. When they were, it was only in circumstances where evidence could be shown that the classification system employed by a school district resulted in large-scale racial or economic discrimination. *Hobson v. Hansen*, 269 F. Supp. 401, D.C. District (1967). Even in this kind of case, the courts have acted only reluctantly, as indicated by the few which have been willing to follow the *Hobson* decision. (In recent years, of course, the legislative branches of federal and state governments have acted to require certain elements of due process in the assignment of children considered to be disadvantaged by mental, physical, or emotional handicaps.)

Recent Developments

As a result of usual court attitudes on the issue, it is already settled law that students have certain basic constitutional rights which must not be interfered with by public school authorities. It is also undisputed that students enrolled in a public school--especially those who have paid tuition, as at a medical school, have a property interest which may qualify for protection.

What is not so certain is whether a particular letter grade, class standing, or other evaluation of student performance is a similarly protected interest. In recent years, several courts have indicated that it may be--especially if the student is in a professional post-graduate field such as medicine. The reason for this is clearly the effect which dismissal can have upon the student's future. This seemed a major element in the court's reasoning in a case involving another medical student who was dismissed for academic reasons without a hearing. *Greenhill v. Bailey*, 519 F2d Eighth Circuit, Iowa (1975). The student's dismissal was accompanied by a notice to a national committee of medical schools that he lacked "intellectual ability or insufficient preparation." All medical school applications were checked for personal evaluations by this committee. These circumstances seemed to place a stigma upon the student similar to that which the Supreme Court had held to be objectionable in its decision on non-renewal of teachers a few years before. *Board of Regents v. Roth*, 408 U.S. 573 (1972). This stigma and the consequent possible loss of opportunity to ever practice medicine convinced the court that due process protection was required.

Another factor which has persuaded some courts that a student's constitutional rights are being abridged is the relationship of the disciplinary action to the infraction involved. Where the seriousness of the penalty seems disproportionate to the offense, judges seem to be more inclined to find a constitutionally protected interest than otherwise. This seems to have been the basis of a group of decisions concerning grade reductions for truancy or unexcused absence.

Truancy and Unexcused Absence

In Illinois, where a school policy required reduction of a student's quarterly letter grades in each subject by one letter for each day of classes missed without an excuse, the court felt that the policy was unduly harsh. Even so, the court declined to interfere in this case because of other factors. The policy had been withdrawn by the time of trial, and had not been fully imposed on the student anyway. Also, by the time of the appellate decision, the student had already been admitted to the junior college to which he had applied, so he seemed to have suffered no lasting damage. *Knight v. Bd. of Ed. of Tri-Point Community S.C.*, Appellate Ct. of Illinois, 4th District (1976).

The student also argued that there was no rational connection between the conduct punished and the penalty. He contended that to permit reduction of academic grades automatically for unauthorized absence was to distort the meaning of such grades, which purport to be evaluations of academic performance. The majority of the court was not persuaded and expressed the belief that conduct and effort are a legitimate part of a student's work, at least at the high school level. In their opinion, truancy as a demonstration of lack of effort may, therefore, be punished appropriately by grade reduction. This is the only recorded decision of an appellate court on this issue.

The New Jersey Commissioner of Education, who has quasi-judicial powers, has dealt with this issue on several occasions. In *Minorics v. Bd. of Ed. of Phillipsburg* (3/24/72), for example, the commissioner overruled a school's policy of giving

a zero for classes missed without excuse. The result of the policy was to cause a student to get a failing quarterly course grade for even a single absence. A major aspect of the action, therefore, seems to have been based on the severity of the punishment, rather than upon the objection to the use of a grade penalty itself.

This rationale was expressed more clearly in a later decision of the commissioner, in *Wheatley et al v. Bd. of Ed. of Burlington* (9/23/74) in which nine students who had had their diplomas withheld for unexcused absence were petitioners. In this case, despite the fact that the penalty was still more serious than in *Minorics*, the commissioner upheld the local board. The difference in attitude was based apparently on the high frequency of absence in the latter case, and caused the commissioner to be concerned that failure to take action in such cases might even constitute a violation of the compulsory attendance law.

Finally, in *Gertner v. Bd. of Ed. of Elmwood Park* (6/10/74) the commissioner ruled that it was neither excessive nor inappropriate for a school district to prevent students suspended for "cutting" classes from taking part in graduation ceremonies even though the students had satisfied graduation requirements and would, in fact, receive their diplomas. In this case the N.J. Commissioner supported deprivation of an academic privilege as a disciplinary measure even though it was unrelated to the action which gave rise to the discipline. The penalty, however, is not one which would affect the student's academic record. The commissioner's comments on student attendance and compulsory schooling offer a good rationale for such policies:

> Frequent absences of pupils from regular classroom learning experiences disrupt the continuity of the instructional process. The benefit of regular classroom instruction is lost and cannot be entirely regained, even by extra after-school instruction. Consequently, many pupils who miss school frequently experience great difficulty in achieving the maximum benefits of schooling. Indeed, many pupils in these circumstances are able to achieve only mediocre success in their academic programs. The school cannot teach pupils who are not present. The entire process of education requires a regular continuity of instruction, classroom participation, learning experiences, and study in order to reach the goal of maximum educational benefits for each individual child. The regular contact of the pupils with one another in the classroom and their participation in well-planned instructional activity under the tutelage of a competent teacher are vital to this purpose. This is the well-established principle of education which underlies and gives purpose to the requirement of compulsory schooling in this and every other state in the nation. *Wheatley et al v. Bd. of Ed. of Burlington* (9/23/74).

Procedural Due Process

Another source of objection to academic penalties concerns the way in which the disciplinary procedure is carried out. These procedural objections are also based on that part of the 14th Amendment to the Constitution called the due process clause, which was reviewed in detail in the Legal Memorandum on Suspension and Expulsion (June 1975).

Generally speaking, the degree to which procedural protection is due a student depends on the severity of the punishment. If the punishment is not serious enough to create an interference with constitutional interests in life, liberty, or property, then no due process need be accorded. This was the basis of the Supreme Court's decision last term in *Ingraham v. Wright*, 430 U.S. 651, in which it found that due process was not required in the administration of corporal punishment.

This may not be the case with a policy of lowering grades for disciplinary reasons. Even where the purpose is not disciplinary, dismissal, classification (tracking), or demotion are being looked at by the courts to see whether adequate procedural protection is being provided because of the possible long-term effects of such policies.

This is the key issue being raised in the *Horowitz* case which introduced this Memorandum. In addition to the student's allegations that the reasons for her dismissal are impermissible (discrimination on the basis of gender and religion) she further alleges denial of adequate notice and hearing. This was also an issue in *Greenhill*. In both cases, the Federal Courts of Appeal held that notice and hearing had to be provided before a student could be dropped, at least from medical school, and in cases where the circumstances made it unlikely that the student could enroll elsewhere. In neither case, however, did the courts require that the hearing be a formal one such as might be required in a disciplinary expulsion.

In yet another federal appellate decision, *Gaspar v. Bruton*, 513 F2d 843, 10th Circ. (1975) a nursing student dismissed from a vocational-technical school in Oklahoma for failing to meet academic standards failed to convince the court that a prior hearing had to be provided. Instead, the court held that the student need only be advised of her deficiencies, unless the student could present evidence of ill will or bad motives on the part of school officials. Other evidence which seemed of importance to the court's decision was the fact that the school policy of dismissing students at any time for academic deficiencies was stated in student handbooks. Also, the student was placed on probation several weeks before dismissal, and called in for a full and frank discussion with school officials, at which time reasons for her dismissal were given to her.

But even in this case, the very fact that the court would consider a due process argument where the dismissal involved was conceded to be for academic reasons represents an expansion of the previous law in educational matters. Only two years before, in a similar case brought by a nursing student at a community college, a federal district court clearly stated its opinion that dismissals for academic reasons were to be sharply distinguished from those proceeding on a disciplinary basis, only the latter being subject to the prior notice and hearing requirements of due process. *Brookins v. Bonnell*, 362 F. Supp. 379, U.S.D.C. E.D. Pa. (1973).

CONCLUSIONS

The number of cases on this subject is small, and some aspects of the decisions are still in conflict, but a few conclusions may be drawn:

1. Use of academic penalties such as grade reduction as a means of discipline for student actions unrelated to academic performance may be open to challenge either on constitutional grounds (denial of substantive due process) or for being beyond the bounds of reasonableness. Examples of offenses for which academic penalties might be found inappropriate are smoking, gum chewing, and use of obscene language.

2. Automatic grade reduction for truancy will usually be permitted if it can be shown to have a reasonable educational relationship to the offense. To demonstrate this relationship:

   a) The rules should set forth the educational rationale for grade reduction policy; i.e., that attendance and participation in class are necessary to academic achievement.
   b) The rule should be made known to all students through the school's official student handbook or similar means.
   c) The policy should not be so harsh as to be difficult to justify on an educational basis.

3. Issuance of low grades, refusal of credit, or dismissal for *academic* as opposed to disciplinary purposes are unlikely to be subject to court review, or to due process requirements such as notice and hearing, unless the student has a clear basis for alleging that the action by school authorities was arbitrary, capricious, or in some other way an abuse of discretion.

4. In general, the more severe the effect upon a student, the more likely that due process requirements may apply. For this reason, the implications flowing from a particular academic penalty may raise due process considerations even when the penalty itself would not. This is particularly true if the circumstances are such as to place a stigma on the professional or personal reputation of the student, and to have long-term and continuing effects upon his future.

Classification of students as handicapped, or assignment to special curricula will, of course, be subject to the procedural requirements of state and federal laws such as Section 504 of the Rehabilitation Act of 1973, and the Education for All Handicapped Children Act (P.L. 94-142).

Clearly, then, courts are more likely to be concerned with dismissals, failures, or grade reductions of students in medical schools or other professional schools than with similar actions at the secondary or even college level. But the willingness of courts to review such academic actions at all represents a change in attitude almost unprecedented until very recent years.

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